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IMPORTANT PUBLIC DOCUMENT.

Counsel of an Old-Line Whig and Republican.

THE LEGALITY OF CONGRESS DOUBTED.

Letter from Hon. Thos. Ewing.

The following is a corrected copy of the letter read at the Conservative Republican State Convention held in Columbus on the 7th inst.:

LANCASTER, O., Aug. 2, 1862.

Hon. O. H. BROWNING:
DEAR SIR—Your letter, inclosing a copy of a call for a National Convention to be held at Philadelphia on the 14th inst., has long been before me. I at once expressed to you my hearty concurrence in its objects, but causes, not within my control, have thus far delayed me in giving, as I then promised, more definitely and at large, my views on the subject.

We all feel and know that the condition of the country is unsettled—it is in some respects anomalous. The different departments of the Government do not move harmoniously in their proper spheres, but in some respects retard and disturb the action of each other. The evil requires a remedy, which can only be applied on a careful investigation of its causes.

It is most important that we have a distinct understanding of the present condition of our country—the state of its organic law as settled by recent events, and a consideration of the errors and irregularities by which its action is disturbed, and a fair presentation of these matters to the public without a mixture of the passion or prejudice of party, that may apply the correction. This is, as I understand it, the object of the proposed Convention. To this object I am desirous to lend my feeble aid, as one among the thousands whose aggregate judgment make up public opinion.

A large proportion of the leading men of the South have, for more than thirty years past, been taught in the school of disunion, reared up and educated in the political faith that allegiance to the State is paramount to allegiance to the Union, and that a citizen of the State may, at the command of his State, lawfully bear arms and wage war against the United States, and as a corollary, against any one or more of the sister States.

This is not a new doctrine; it is the same which under forms of government distracted Europe for more than six hundred years, made every barony and castle generally a robber's stronghold, and the whole country a military encampment.

Those holding the physical force in eleven States in 1861, declared in convention their secession from the Union, expelled its officers and repudiated its laws, and stood prepared to maintain as far as they might, by force of arms, distinct and independent nationalities, confederated for the purpose of attack or defense against the Union as a common enemy. On the other hand, we asserted absolute integrity of the Union; that no State could secede from or cease to be an integral part of the Union; that its laws, constitutionally enacted, were of binding force in all the States and Territories, and that to levy war or oppose armed resistance to the execution of the laws of the Union, was treason, even though such resistance were in obedience to a law of a State and to the mandate of its authority.

And it is this on which the issue was taken between the Union and the seceding States. A civil war was the consequence, great in its magnitude, great in its results. The supremacy of the Union has been maintained, the illegal and revolutionary declarations of secession have been annulled, together with the ordinances in their support and maintenance, and the several States, so far as their official acts can affect that object, have resumed each its place as members of the Union, and acknowledged the supremacy of its laws.

We have contended throughout the contest that the seceding States were States of the Union, and that the citizens of those States who in any way aided in the revolt were guilty of treason. This point is now yielded—it is settled and not open to discussion. Your call invites only those who hold "the Union in every case indissoluble and perpetual," and it declares that no delegate will take a seat in the Convention "who does not loyally accept the National situation and cordially endorse" the great principle above announced.

This I most heartily approve. I would not willingly meet in council or join in political action with those, if such there be, who would again open that question, the agitation of which has

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indicted such untold misery upon the country.

I assume, therefore, that the laws of the Union enacted pursuant to the Constitution are paramount, neither weakened nor affected by the laws of the State—that no State can secede from the Union, either temporarily or permanently—that the ordinances of secession, though bearing the names of the States, were the acts of unauthorized men, who temporarily usurped the power—that during the whole contest, from its beginning to its close, each and all the States, notwithstanding their ordinances of secession, were States of the Union, and at the close of the contest, the usurped power was withdrawn and the supremacy of the Union acknowledged by the authorities of the States.

It follows as a necessary consequence that even in the heat and violence of the rebellion the States in which rebel violence most prevailed were each and all of them, as States, entitled to their representation in the two Houses of Congress. Such was clearly the understanding of the statesmen who then ruled the stormy scene. Tennessee was represented after the ordinance of secession in that State was passed; and I know it was the express wish of President Lincoln that Bayard, the Senator from Arkansas, whose term had not expired, and who had taken no part in the rebellion, should come to Washington and resume his seat in the Senate.

The difficulty existed not in the right of the State to be represented, but in the means of electing and certifying Senators and Representatives. With that difficulty the House of Congress had in the first instance nothing to do; but when the State returned, its Senators and members, then it was the province of the two Houses of Congress each to examine the credentials of the proposed member of its own body, ascertain whether the members of each were duly appointed, and whether they personally conformed to the requisites which each House had established for its members.

It cannot, therefore, be rationally contended, that a State in which the rebellion has been suppressed, the ordinance of secession rescinded and annulled, and the power of the Union acknowledged, can be denied its representation in the two Houses of Congress, because it has been for a time controlled by men in a state of revolt, when that very condition, while it existed, did not deprive it of its right of representation. But thus far those States have been denied, as States, their representation in Congress without question as to the qualifications of the individual members, or the regularity of their election.

It will be difficult to establish a position that a portion of the Senate and the House, which have thus rejected the representation of a part of the States as States, is a legally constituted Congress under the Constitution. They, of course, have the power which the Constitution gives them—the Senate to reject any and all such members, individually, for the reason that they do not represent their several States; the House, that they do not represent their appropriate districts. The Constitution defines in express terms the power of each House over the members who offer themselves for recognition.

The second section of the first article of the Constitution provides that "the House of Representatives shall be composed of members chosen every second year by the people of the several States," that is to say, of each and all the "States." To this there is no exception and no limitation. It includes States which have been in revolt as well as those which have been always loyal.

Another clause of the same article provides that when vacancies happen in the representation from any State, the Executive authority thereof shall issue an order for an election. Here is no qualification, no requisite condition of the State to entitle it to its representation. How does any portion of Congress, or a committee selected by a part of Congress, acquire the power to lay down conditions and deny representation to States that do not conform to them?

The third section provides that the Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years.

The fifth article provides that "no State without its consent shall, even by an amendment of the Constitution, be deprived of its equal suffrage in the Senate." So clear is the construction of the Constitution, so fixed the purpose of the Convention, that even an amendment of the Constitution would be void, that should attempt to deprive a State for a single day, under any conditions, of its due representation in that body.

But the Constitution makes ample provision for the prevention of illegal intrusion in either of those bodies, and puts it in the power of each to exclude from itself all Members and Senators who are unfit from any cause, national or moral, for want of due election, due certificate, defect of loyalty to the

Union or moral character, to hold their places in either of those bodies.

Hence it is very clear to my mind that the exclusion of States as States for any reason, supposed or alleged, is a violation of their constitutional privileges. The members who may be in possession of the Senate Chamber and House of Representatives have the same right to assume that New York as that Georgia is unfit to be represented until it complies with their prescribed regulations; and if they may exclude eleven States they may exclude twenty, and each will effect alike the Constitutional legitimacy of the body, which thus lays down conditions for admission and refuses it to those who do not comply with those conditions. The wrong would be more glaring if a majority were excluded, but the principle would be the same.

It may be said that in the Senate there could not be a constitutional quorum if twenty were excluded, but what of that? Admit the blinding of the eyes of the Constitution and there is an end of the argument.

With a view to the present and future quiet of the country, I am anxious that the present state of things should cease to exist.

Laws formally enacted by the members and certified, approved by the officers of the two Houses and the President, must be recognized by our courts without inquiring into the regular constitution of each of the powers enacting them, but whatever comes in the form of law, emanating from a single branch of the law-making power, is in my judgment open to examination. As, for example, if but one-third of the States should meet and take possession of the halls of the Senate and House of Representatives, enact resolves in the form of law without executive sanction or recognition, it would be absurd to say that such resolves were law, without having power to inquire into the constitutionality of the assembly enacting them. This is but on a *fortiori* case—the principles are precisely the same with that before us. It is quite immaterial whether one-third or two-thirds of the States be excluded from participation in the enactment. Admit the right of inquiry into the constitution of the enacting body in one case, the same right follows in the other, and the illegitimacy in the one case is as clear as in the other. This difficulty applies to the Civil Rights Bill, to the late Freedmen's Bureau Bill, and to the Constitutional Amendment.

This objection, together with the Constitutional difficulties in the several bills, can be brought before the courts, and it is not too much to say that their decision will be doubtful on that point, if on that alone. On such reflection as I can give it, I think these enactments would be each and all of them held void.

This, of course, does not apply to cases where the States did not appear at the proper time and place and offer their Senators and Representatives.

It would have a quieting effect and be but a reasonable sacrifice to constitution and law to repeal, at the earliest possible moment, all such enactments of the last session of Congress which have not received the sanction of the President. For whatever the decision of the Courts may be on the subject, it is quite clear that the opinion of the Bench and Bar of the United States, outside of political circles and beyond political influence, will not be unanimous in favor of the validity of these laws. They will not be absolutely and entirely respected by the mass of the people as they would have been if enacted by a Congress in which all of the United States were suffered to be represented.

There are reasons urged for refusing the admission of the eleven rejected States into the legislative councils of the Nation. Stripped of all ambiguity, the result is this: Exclusion is said to be necessary in order to retain power in the hands of the present majority; and it is not, I think, generally claimed to be Constitutional, but right and reasonable in the present exceptional case. But allow this as a precedent, and special exceptions will arise, in the opinion of the party in power. The present Congress can not say, "thus far and no further." The Constitution allows no such exception; if violated for a day, it is violated.

This I look upon as the great source of evil pregnant with political mischief. It is a sap applied to the very foundation of our National edifice; and if pressed forward to its results, must shake, if not destroy it. It is needless and idle to dwell upon the past—that which belongs to history; but it is not perhaps improper for me to say that I have not in all things entirely concurred in the action of the past or present Executive. In the direct political movement necessary to preserve the integrity of the Union and enforce its laws, in the conduct of the war, I felt no difficulty, no hesitation. I felt, too, the necessity, as a war measure, to remove the power of mischief from those who actively and openly attempted to obstruct the raising of our armies or to induce desertion from the ranks. Their crime approached treason, but did not fall within its definition. The position of those in

its commission was ambiguous, occupying middle space between traitor and spy; but whatever the judgments of Courts might be upon their acts, the performance of a duty which the President owed, the Constitution required that they should be deprived of the power of mischief.

It was necessary to protect our armies in the process of formation against hostile elements as well as to protect them against meeting and opposing armies in the field. Military commissions are warrantable only in cases in which the commanding General is justified in ordering execution on his own mandate without trial, then he may properly organize a commission to advise and share with him the responsibility; but I have never been satisfied with the trials and convictions by military courts where our civil courts held undisturbed sessions, and our civil laws could be executed. Such things have nevertheless been done, and I have not failed to protest against it in the proper quarters and used my powers of reason and argument to prevent it.

The prevention of mischief is one thing, the trial and punishment of a crime quite another.

For this use of military tribunals the administration of President Johnson is not entirely free from responsibility, but as far as I know, it was only when he was fresh in his office, near to the surrounding circumstances which influenced the action of his predecessor and of his counselors that he fell into what I consider, a vital error—and showed from the first a purpose to apply to the mischief an early and, whenever possible, an efficient remedy. Thus, in the only instance in which he greatly erred, it was by uniting in the policy of those who now most condemn him; it was by suffering himself to be borne onward by the wild tide of events which threatened to sweep away and obliterate the ancient landmarks of our Republic, and it was only when he attempted to check its violence that he encountered fierce resistance, contumacy and reproach.

Besides the illegal constitution of the two Houses of Congress, by the exclusion of the eleven States, there was a vice novelty in the proceedings of those two assemblies by the appointment of a joint committee on the all important question of reconstruction, and the admission of members to each body—a committee similar to that of public safety in the constituent assembly of France in the days of the revolution, and almost equally potent.

The two Houses were, by the appointment of this committee and the powers granted it, consolidated, and there was no longer, for the more important purposes of the session, two Houses of Congress—two deliberate assemblies. Indeed, there could be no free deliberations in either of those bodies. They were fettered and bound by the action of the joint committee, and no member could be permitted to introduce a measure without its first passing through this ordeal; indeed, it was as much as the political standing of any Senator or Representative was worth to dispute its behests. In a few instances it was attempted, but on each occasion followed by an explanation and an apology.

Men are drifted by the strong current of events where their own deliberate judgment would not carry them. In the composition of most men possessing intelligence and some force of character, there is more of the softer than the oak—hence it is that in times of high party excitement the more reckless and violent govern, in political assemblies, sober-minded men, their superiors in knowledge and intellect.

Measures were adopted almost unanimously which would not pass the two Houses by the free votes of the members, without this restraint. Its efficacy must have been understood and its necessity foreseen, or this strange anomaly in American legislation would not have been resorted to.

By the report of the Committee on Reconstruction, it appears to have been their opinion that what is generally understood as an executive duty, the right of determining when the insurrection or rebellion in the State has ceased and it is in a condition for self-government, pertain to the two Houses of Congress, and not to the President.

They say it was his duty to execute the laws of Congress, and they ignore and they in effect deny his right to do his duty under the Constitution, except as they may direct and impel him; this is their first radical error, and the close of the report shows how unfit a legislative body is for the performance of executive duty.

It was well shown in the long Parliament in England, when they undertook to exercise executive power, it is equally well shown here.

Not only could not Congress agree as to what should be done to effect reconstruction, when it should begin, and how far it should advance, without the aid of a Committee of Reconstruction, but that committee, so selected, had to say that the result of their report was a mutual concession of conflicting opinions.

It would seem that their inability to agree might well have admitted of some deference and respect for the op-

inions of the President, who, with more knowledge, certainly an equally patriotic spirit, much larger information and longer deliberation, differed from some, perhaps all of them; and if he were mistaken, and members were returned from States not organized so as to be competent to return them, each House had the power to determine the question for itself, in the case of each individual member, and on full information to reject such members.

There seems to be no agreement on the points in which it is charged that the President erred. Every act and each conceivable omission to act is objected to by different individuals. The only particular in which they agree is, that he did not in all things conform to the will of Congress. He had opinions of his own, and expressed them in time and form as prescribed by the Constitution. But other grave objections were urged.

Senator Trumbull, in a speech lately delivered to his constituents, claims that the President did not punish traitors sufficiently; in other words, that there had not been blood enough shed, or that there had not been ruin and misery, poverty and privations enough brought upon the people of the South to teach them that rebellion was unprofitable.

Mr. Trumbull, had his views been carried out in detail, would have taught them well that submission was even less profitable than rebellion, and I would ask under what law, after the war had ceased, could the President hang or shoot, or imprison, those who had been traitors? The matter must have been submitted to our courts of justice, and no time had elapsed sufficient to organize and officer courts and bring to trial an hundred thousand criminals for treason.

Mr. Trumbull (and I take him as a fair specimen of the violent members of his party) claimed that the President, in a conversation with him, seemed to yield to the opinion or expressed the opinion that the laws should be rigidly executed against those who violated them. When he conversed with Mr. Trumbull, according to the account we have of the conversation, he seemed to be smarting under the infliction of heavy recent wrongs, and he spoke with feelings of indignation and resentment common to men and justifiable in their private stations; but when he became President of the United States these feelings ought to have been, and I trust they were, suppressed and his personal wrongs forgotten. His office was then the restorer of public peace and order, not the avenger of private wrongs, or the instrument by which private vengeance might be gratified, and it became a question what was the best mode of reconciling all men to their conditions and establishing peace and harmony in the country.

That popular passion and prejudices still exist in the South, is undoubted. The opinions of men as to their abstract rights, are not changed; for no man or men were ever reasoned into a change of opinion by the cannon or the bayonet. Though they may be well taught to live at peace and enjoy freedom and safety of life and property under a regular Constitutional Government, rather than suffer a repetition of the horrors and desolation of a civil war.

It is the remark of a writer, who lived through the French Revolution, who reasoned sagely, and observed much that "the remedy for popular passions is to be found, not in the despotism or arbitrary infliction, but in the assumed sovereignty of the law."

For these reasons I do not unite in the censure which Senator Trumbull casts upon the President, because we discover humane feeling in his official action, for the miseries of those who had most wronged him, especially as I am conscious that his kindness and forbearance tended much more than severity to the establishment of union and harmony.

I am not the apologist of the President, it is simply my aim to do him and all others right and justice according to my own conceptions. In these I may greatly err, but my opinions are formed on passing events, and with a view only to the interests of my country. It is idle to impugn the motives and apply personal abuse to those who differ with us in political opinions—to call names—to use contemptuous epithets, and thus depreciate personally those whose arguments we find to be unanswerable.

There is much of this that is neither creditable or statesman-like in the speech of Mr. Trumbull, which is now before me, but I will not comment upon it.

My wish is that the Republican party, very many of whose members I highly respect, may return to the path of Constitutional rectitude, and walking in that path, I wish them a long and successful administration of their appropriate sphere in the affairs of government, but if they and the Constitution and the Union cannot exist together, I earnestly desire their speedy and final overthrow.

Practically, my opinion is that a humane forbearance in the execution of penal laws, which should make it the interest of men to prefer the Union and

the laws and order to anarchy, is the only sound policy. Some will undoubtedly become outlaws, but as few as possible should be driven to that condition, and the few that having been allowed the privilege of citizens and the rights of property, who chose to form themselves into predatory bands, whether they plundered upon land or water, should be exterminated as enemies of the human race.

I hope much from the good effect of your convention. I am sure that it will be conducted in a spirit of kindness and conciliation, at the same time with firmness and decision. I trust much in its effect on public opinion—much, indeed, in its effect on the opinions and actions of the present Congress. Indeed I hope at the next session of this Congress, to find a state of feeling such that no considerable changes may be necessary to secure the triumph of Constitutional law, and the union, peace and prosperity of each and every part of our common country.

I am, very respectfully, yours,
T. EWING.

To the Hon. O. H. BROWNING, Washington City, D. C.

Under the Load.

Quite a number of perplexing subjects just now annoy the honest supporters of the Republican party. The ultra radicals who have assumed the entire control and management of the Republican organization are put to their wits in excusing and explaining them to the voters. Among them are:

The Philadelphia Convention.

Letter of Hon. Thomas Ewing.

Removal of radical Republicans from office, and putting in their place conservative Union men.

President Johnson's reconstruction policy.

The radical advocacy of negro Suffrage.

The late over-whelming Democratic victory in Kentucky.

The abandonment of the radical organization by the most prominent Republicans in the country.

The doings of the late Congress in passing Civil Rights Bills, Freedmen's Bureau Bills, oppressive Tariff measures voting of hundreds of thousands dollars extra in the pockets of the members, &c.

The support of the Constitutional amendment by Colonel Granger, and all the leading ultra men of the radical organization.

Making "eleven Irelands," eleven Poland, eleven subjects of arbitrary, unconstitutional and oppressive legislation out of the Southern States.

Disregard, on the part of the majority in Congress, of the spirit and letter of the Constitution in its most important features by passing test laws, excluding from their seats members elected in accordance with existing statutes, State and Federal, &c.

The revolutionary schemes of the radical leaders as exposed by Henry J. Raymond and others, and as avowed by Senator Wilson and Representative Montwell, of Massachusetts.

These and other kindred doings of the radical managers have placed the Republican party "under the load," and will be likely to keep it there. Honest voters, as we are informed, are daily abandoning the Republican organization—some coming over to the Democrats, others connecting themselves with the "National Union Party" under the lead of President Johnson, Secretary Seward, Senators Cowan, Doolittle, Dixon and others. Sectional parties, such as the radical is at the present time, cannot long exist in a free country. The one or the other must go down. The result as to which will fall cannot long be in doubt.—[Zanesville Signal.]

The incense burned in the Chinese empire in idol worship is said to cost \$450,000,000 annually.—[Exchange.]

The incense which the American Congress burns annually to its ebony idol doesn't cost quite that much, but the amount is enormous.

It has been decided by United States Commissioner Parker, at Buffalo, that a man cannot roll tobacco leaves into the form a cigar, and smoke them himself, without taking out a Government license as a cigar maker.

The English and French journals have spoken of the resignation of Prince de Metternich from his post of Minister for Austria at the Court of the Tuileries. A Vienna letter states that he did offer to withdraw, but was not allowed by the Emperor Francis Joseph.

During the prevalence of a tornado in the vicinity of Galveston, on the 28th ult., a little girl, aged five years, was lifted high in the air and carried fully fifty feet before alighting, but, strange to say, no bones were broken, though she was badly bruised.

The Radicals are curious about the Philadelphia Wigwag. This is natural, as there they will be scalped